UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

COLUMBIA MEMORIAL HOSPITAL

and

Cases 3-CA-27921
3-CA-27967

1199 SEIU, UNITED HEALTHCARE WORKERS EAST

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for the Charging Party.

DECISION

STATEMENT OF THE CASE

PAUL BOGAS, Administrative Law Judge. This case was tried in Albany, New York, on May 24 and May 25, 2011. The initial charge was filed by 1199 SEIU, United Healthcare Workers East (the Union) on December 28, 2010. The Union filed a second charge on February 15, 2011, and amended that charge on March 25, 2011. The General Counsel issued the consolidated complaint (the complaint) on March 29, 2011. The complaint alleges that Columbia Memorial Hospital (the Respondent) violated Section 8(a)(1) by, inter alia, prohibiting its employees from wearing certain union paraphernalia, and violated Section 8(a)(3) and (1) by suspending an employee for wearing prohibited union paraphernalia. The Respondent filed a timely answer in which it denied committing any of the violations alleged.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent and the Union, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a corporation, provides medical services, including but not limited to acute care, at its hospital facility in Hudson, New York, where it derives gross revenues in excess of $250,000 and receives goods valued in excess of $5000 directly from points outside the State of New York. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. Background Facts

The Respondent operates a hospital that provides a range of medical services to the public. Two groups of employees at the hospital are represented by the Union. One is a bargaining unit of approximately 250 professional employees and the other is unit of between 300 and 400 service and technical employees. A single labor contract covers both bargaining units. In July 2010, the Union and the Respondent executed a collective bargaining agreement that was set to expire 5 months later on December 31, 2010. In August 2010, the parties began negotiations for a successor to that agreement. Those negotiations were ongoing during the period that the complaint covers. The parties reached a memorandum of agreement for a new contract on May 12, 2011.

B. Respondent's Dress Code/Professional Image Policy

The Respondent contends that it lawfully prohibited employees from wearing certain union buttons and stickers in patient-care areas pursuant to the hospital's policy on "Dress Code/Professional Image." The version of this policy in effect since August 2008 provides in relevant part:

> POLICY:
> Employees of Columbia Memorial Hospital (CMH) must display a professional image to reflect the value CMH places on its patients, residents and visitors. Our purpose is to convey a professional appearance to patients, visitors, and coworkers.
>
> * * *
>
> RESPONSIBILITIES:
> All employees will adhere to dress code standards as directed by their Director, Manager or Supervisor. All supervisors are responsible for ensuring their staff maintains appropriate standards in appearance. Employees must dress appropriately for work. Columbia Memorial Hospital reserves the right to determine what dress is appropriate.
>
> * * *

> COMPLIANCE
> . . . If an employee's appearance does not conform to hospital standards, they must correct it before they can begin work. If they must go home to do this they will not be paid until they return to work. A second incident will start disciplinary Action . . . .
>
> * * *
>
> Questions about items not covered in the policy, and exemptions and changes, MUST be referred to the Vice President of Human Resources BEFORE taking action.

Respondent's Exhibit Number (R Exh.) 1. The Respondent takes into account the nature of the department where the employee works when deciding what is acceptable attire. For example, employees are required to wear socks or pantyhose in patient care areas in order to guard against infections, but are not required to wear them in the business office. Among the items that the Respondent has customarily prohibited under the policy are jeans, sleeveless sundresses, sweatshirts with logos, hooded sweatshirts or sweaters, visible piercings, and visible tattoos. Pursuant to the policy, Employees have been asked to remove articles of clothing, cover tattoos, and remove or cover visible piercings.

Since well before the alleged violations, and continuing during the period of negotiations for a successor contract, the Respondent has allowed employees to wear a variety of buttons, pins and other accessories in both patient-care areas and non-patient-care areas of the hospital. The items that the Respondent routinely permits employees to wear in all areas of the hospital include several expressing support for the Union. For example, the Respondent permits employees to wear lanyards that have "1199 SEIU United Healthcare Workers East," printed on them. The Respondent also permits employees to wear a rectangular pin that is approximately 2 ½ inches by ½ inch, bears the Union's logo, and reads "1199 SEIU New York's Health & Human Service Union."[1] In addition to this union-related paraphernalia, the Respondent has permitted employees to wear items indicating, inter alia, their years of service, educational alma mater, certifications, firefighting work, Knights of Columbus affiliation, and various personal interests (e.g., Winnie-the-Pooh and Santa Claus). All of the non-union-related accessories that were entered as exhibits were rather small or unobtrusive.

The Respondent states that, under the professional image policy, it permits employees to wear buttons/stickers with messages that are "mere statements of affiliation" in all areas of the

[1] During contract negotiations at least one employee placed a rather large, pro-union, card behind his hospital identification card in the clear plastic holder that he wore on a lanyard for the purposes of displaying the identification card. The pro-union card is approximately three and one-half inches by three inches, and reads: "Fair Contract NOW! We Deserve It!" The card also bears the Union's name and logo. This card faced the employee's chest and was hidden from view except when the identification card holder spun around so that the identification card faced the employee's chest and the "fair contract" card faced out. I find that the record evidence does not establish that the "fair contract" card was generally visible or that the Respondent knew about, or knowingly permitted, it to be displayed. Two management officials, Barb Naccarato and Karen Altomer, credibly testified that they had never observed any employee wearing the "fair contract" card in a patient-care area prior to taking the actions alleged to be unlawful in this case.

hospital, but prohibits employees from displaying buttons/stickers that carry "inflammatory or controversial" messages while those employees are in patient-care areas. Brief of Respondent at Page 2. It was not shown that this interpretation of the professional image policy existed in written form, but the interpretation is consistent with the testimony of the Respondent's officials regarding the reasons for the decisions to prohibit employees from wearing certain union paraphernalia in patient-care areas. Moreover, the record did not show that the officials who took the challenged actions in this case had ever knowingly permitted an employee in a patient-care area to display any accessory – whether related to the Union or not – that could reasonably be described as controversial or inflammatory.

C. Naccarato Reacts to Stomp Sticker; Macagnone Suspended; Policy Issued

On December 22, 2010, the Union distributed a new sticker to employees. The sticker shows the small figure of a man, approximately one inch tall, who is raising his hands to protect against a giant boot that is about to stomp on him. The sole of the boot is about twice as long as the man is tall. The entire sticker is about two and half inches in diameter, has a bright yellow background, and a small union logo at the bottom.[2] This "stomp" sticker was created to express the Union's view that, in the ongoing contract negotiations, the hospital wanted to "step on" the employees.

On December 22, Barbara Naccarato, the Respondent's director of emergency services, observed two employees in the emergency department wearing the stomp sticker. Naccarato concluded that the sticker violated the Respondent's professional image dress policy. She testified that approximately 80 percent of the Respondent's patients are admitted through the emergency department and that it is important to provide an environment there that encourages patients to trust the hospital to care for them. Naccarato approached the two employees – Terry Roule[3] and Betsy Mathrick – who she saw with the stomp sticker and told them: "You shouldn't be wearing that. It doesn't belong here. It's a patient care area."[4] The employees responded that their understanding was that Ray Jones, the Respondent's vice president of human resources, had approved the wearing of the sticker. That day, Naccarato attempted unsuccessfully to reach Jones to ask him if this was true and, in the meantime, she permitted the employees to continue displaying the stomp sticker.

The next day, December 23, Naccarato reached Jones by phone. She told him about the stomp sticker, and stated that in her view wearing that sticker in a patient-care area was a violation of the professional image policy. Jones agreed with her and stated that he had not approved the wearing of the sticker. Shortly after her conversation with Jones, Naccarato met individually with three employees who were wearing the stomp sticker in the emergency department that day – Joseph Macagnone, Julie Propst, and Roule.

[2] The sticker was entered as an exhibit at trial and a photocopy of it is included with this decision as Appendix B.

[3] The briefs filed by the parties spell this name alternatively as Roule and Rowley. The record does not reveal what the correct spelling is. The transcript uses "Roule," but notes that the court reporter arrived at this phonetically.

[4] The record shows that Roule wore scrubs at work. It does not show what Mathrick wore.

Macagnone is a mental health assistant in the emergency department whose job it is to help new mental health patients acclimate to the hospital. His duties include getting the patients into hospital clothes, obtaining blood samples, urine samples and vital signs, and, if necessary, restraining the patients and keeping them, in Macagnone's words, "nice and quiet."[5] At work he wears scrubs that he supplies himself. When Naccarato met with Macagnone about the stomp sticker there was also another hospital manager present – Marie Carrabello, education coordinator. At the meeting, Naccarato asked Macagnone to remove the stomp sticker. She told him that "it's not professional, it doesn't meet our policy, and it's not appropriate in a patient-care area." She explained that she considered "the sticker to be very controversial and that our patients should not . . . be put in the position to maybe feel uncomfortable." Macagnone refused to remove the sticker. Naccarato informed Macagnone that if he refused to remove the sticker she would "consider that being insubordinate" and "would have no recourse but to follow the disciplinary process." Macagnone still refused to remove the sticker. Macagnone pointed out to Naccarato that he had been wearing a union lanyard and various buttons and pins since the first day of his employment, and that the Respondent's officials had not previously said anything to him about it. Naccarato did not respond to this comment. She told Macagnone that she was suspending him pending an investigation and that she would need an opportunity to prepare the disciplinary paperwork. Macagnone left the office.

Macagnone came to Naccarato's office shortly thereafter, this time accompanied by Cindy Northrup, a union delegate and negotiator. Naccarato again asked Macagnone to remove the stomp sticker and Macagnone once again stated that he would not do so. At that point Naccarato handed Macagnone disciplinary paperwork stating that he was suspended pending an investigation for refusing her instruction to remove the sticker. Macagnone asked how many days he was being suspended for and Naccarato answered that the suspension was of "indefinite" duration. During this meeting, Northrup pointed out that she too was wearing the stomp sticker. Naccarato testified that Northrup was in a non-patient-care area and, therefore, was not violating any policy by wearing the sticker.

Also on December 23, Naccarato met with Roule and Julie Propst – two employees who, like Macagnone, were wearing the stomp sticker in the emergency department. Naccarato told Roule that the sticker was inappropriate in a patient care area and asked her to remove it. Roule initially refused, but after Naccarato asked her a second time, Roule took the sticker off. Roule was not disciplined in any way. Subsequently, Naccarato called Propst into her office, and said "I asked you to come in here because you're wearing a sticker that I think is unprofessional, inappropriate and controversial, it doesn't belong in our patient-care area, and I'm going to request that you remove it." Propst agreed to remove the sticker and no disciplinary action was taken against her. The events of the day caused some emergency department employees to discuss whether they would be disciplined if they wore the stomp sticker. At some point on December 23, a number of union officials who were not hospital employees came to Naccarato's

[5] The prior September 2010, Macagnone became a union delegate "in training," but he did not become an elected union delegate until January 2011. He was also one of the ten members of the Union bargaining committee and helped distribute the stomp sticker to other union members. Although it is fair to infer that that the Respondent was aware of Macagnone's participation on the bargaining committee, the record does not show or support an inference that, in December 2010, the Respondent was aware of Macagnone's status as a delegate in training or of his involvement in the distribution of stickers.

office to confront her about the actions she was taking with respect to Macagnone's display of the stomp sticker. These individuals caused a commotion in Naccarato's office and in a hallway close to a patient-care area.

The Respondent concedes that it received no formal complaints from patients or visitors regarding any of the union paraphernalia at-issue in this proceeding. However, the Respondent does contend that an informal complaint was made about the stomp sticker. The Respondent relies on the testimony of Naccarato, who stated that Carrabello (the same manager who attended the December 23 disciplinary meeting with Macagnone) told her that Carrabello's own father had been a patient in the hospital and had stated to Carrabello that the stomp sticker "doesn't belong here." I do not credit this report. It is hearsay in that neither Carrabello nor her father testified. The report was, moreover, not corroborated in any way. Although the Respondent generally documents and investigates patient and visitor complaints, it did not document or make any investigation regarding what Carrabello is claimed to have reported to Naccarato. Moreover, I find it suspicious that the individual who allegedly communicated this comment to Naccarato was the same manager who Naccarato had trusted to serve as her witness during the disciplinary meeting with Macagnone. Lastly, I note that the language that Naccarato ascribes to Carrabello's father – i.e., the sticker "doesn't belong" here – is the same formulation that Naccarato herself used in talking to Roule and Mathrick on December 22 and to Propst on December 23. This leads me to suspect that Naccarato's own reaction to the sticker influenced her recollection of anything that Carrabello reported to her.

On December 23, 2010, the Respondent issued a memorandum to its directors prohibiting employees from wearing the stomp sticker in patient-care areas. That memorandum stated:

> It has been brought to our attention, that employees have been seen wearing a yellow sticker with a large foot appearing to be stepping on a person.
>
> Please be advised that this insignia is not to be worn in any patient care area. Please advise your employees that at any time they are in patient care areas, the insignia must be removed.
>
> Thank you in advance for your attention to this matter.

General Counsel's Exhibit Number (GC Exh.) 2.

As discussed above, Northrup wore the stomp sticker when she came to Naccarato's office. She also wore it in the hospital pharmacy where she worked. The pharmacy is not a patient-care area and during the time period from late 2010 to early 2011 Northrup's work as a pharmacist rarely brought her to patient-care areas of the hospital.[6] In January 2011, Northrup's supervisor advised her that other supervisors might ask Northrup to remove the stomp sticker when she visited patient-care areas of the hospital; however, Northrup has never actually been asked to remove the sticker.

[6] Beginning in April 2011, regulatory changes caused Northrup to begin visiting patient-care areas more frequently.

D. Macagnone's Suspension Ends; He Begins Wearing "Proud 1199" Button

On December 29, Naccarato contacted Macagnone by phone to tell him that his suspension was for 5 days and that he could return to work, but would not be permitted to wear the stomp sticker. Macagnone returned to work on January 1, 2011. He did not wear the stomp sticker after his return, but did attach a new pro-union button to his lanyard. The new button reads "PROUD 1199 SEIU Member." The button is approximately 3 inches in diameter, and the words are in yellow against a purple and red background.[7] Naccarato first noticed that Macagnone was wearing the proud 1199 button on January 18. She had observed other employees wearing the button, but Macagnone was the first employee she saw wearing it in a patient-care area. In her view, wearing this button in a patient-care area violated the Respondent's professional image policy.

On January 18, Naccarato called Macagnone to her office. Naccarato asked Macagnone to remove the proud 1199 button. Macagnone initially refused, but then the union representative who was accompanying Macagnone advised him to remove the button to avoid being suspended again. Macagnone agreed to remove the button, but told Naccarato that he was doing so "under duress." At trial, Naccarato explained that she asked Macagnone to remove this button because it was "political" in nature and therefore inappropriate in a patient care area. She testified that the button was political by virtue of its size, which she characterized as "a little exorbitant."

E. "Access Denied" Button

Karen Altomer is the nursing coordinator for the Respondent's medical/surgical, orthopedic, pediatric, ventilator, hemodialysis, and hospice operations. On December 24, 2010, Altomer was covering duties in addition to her own – acting as a supervisor for the entire hospital. She entered the intensive care unit, which was not one of her usual areas of responsibility. Altomer observed that Marquerite Coates, the secretary for the intensive care unit,[8] was at her work station wearing a button with this message:

ACCESS
DENIED!
Ask the Boss
WHY?

The button is approximately three inches in diameter and the message is written in large white letters against a blue background.[9] The Union created this button to protest the Respondent's refusal to allow union representatives to enter satellite clinics operated by the hospital.

Altomer concluded that Coates' display of the button violated the Respondent's professional image policy. She noted that Coates' work duties included interacting with patients

[7] A photocopy of the button was introduced as an exhibit at trial and is included with this decision as Appendix C.

[8] Coates is not required to wear a uniform at work.

[9] A photocopy of the button was introduced as an exhibit at trial and is included with this decision as Appendix D.

and visitors in the intensive care unit. At trial, Altomer testified that the button violated policy because "it's loud, it's inflammatory, it's coarse, it changes the focus of patient care." In addition, she testified that she was concerned that the button could be interpreted by patients to mean that they were being denied access to care or services. Altomer stated that the hospital works to maintain "a tranquil caring environment" and that display of the access denied button "contradicts that." She had not, she testified, previously seen the access denied button, the proud 1199 button, or the stomp sticker, on any employee who she supervised in a patient care area.[10] Altomer was aware that employees in areas she supervised wore union lanyards, but she stated that she permitted that because "it's just a logo."

Before taking action with respect to Coates' display of the access denied button, Altomer contacted Jones (vice president for human resources) and described the button to him. Afterwards, Altomer told Coates that she was asking her to remove the button because Coates was working in a patient-care area. Coates questioned why she was being asked to do this, and Altomer responded that wearing the button in a patient-care area violated hospital policy. Coates asked to see the relevant policy, but Altomer did not provide anything. Coates refused to remove the button, and Altomer told Coates that she was receiving a "verbal corrective action" for this refusal. Then Altomer asked again that Coates remove the button. Coates refused. Altomer told Coates that she would be suspended pending an investigation if she did not remove the button. At that point Coates removed the button. After Coates removed the button, Altomer did not discipline her in any way.

F. "Have a Heart" Sticker

On February 14, 2011, the Union distributed a sticker that read "HAVE A HEART DO YOUR PART," in large letters and identified the Union in smaller letters. The sticker was created for Valentines Day to encourage members to be active in the Union. The sticker is approximately 2 ½ inches in diameter and the writing is in black against a yellow heart with a white background.[11] Coates placed the sticker on her shoulder. On February 16, Coates was wearing the heart sticker and was approached about it by her supervisor – Sarah Freiss, director of patient care services. Freiss told Coates: "You can't wear that . . . sticker in patient areas. Would you take it off." Coates removed the sticker from her person. She placed the sticker on a vase that was on her desk. Freiss made no comment to Coates about placing the sticker on the vase, and Coates was not disciplined in any way.

The Respondent does not claim that it received any complaints from patients or visitors regarding the heart sticker, and Coates testified that she received no comments about it from patients or visitors. At trial, the Respondent did not call Freiss or any other official involved in the decision to instruct Coates to remove the heart sticker.

[10] Similarly, Naccarato testified that prior to December 22, 2010, she had not seen the access denied button, the proud 1199 button, or the stomp sticker on any employee who she supervised in a patient care area.

[11] The sticker was introduced as an exhibit at trial and a photocopy of it is included with this decision as Appendix E.

G. Complaint Allegations

The complaint alleges that the Respondent violated Section 8(a)(1) of the Act: on December 23, 2010, when Naccarato threatened employees with discipline for wearing stickers in support of the Union, and promulgated and maintained a rule prohibiting employees from wearing Union insignia; on January 18, 2011, when Naccarato threatened an employee with discipline for wearing Union insignia; on December 24, 2010, when Altomer threatened an employee with discipline for wearing a pro-Union button; and, on February 16, 2011, when Freiss enforced a rule prohibiting employees from wearing a pro-Union sticker. The complaint further alleges that, on December 23, 2010, Naccarato suspended Macagnone for wearing a pro-Union button, and did so because of Macagnone's union and concerted activities, and that the Respondent thereby violated Section 8(a)(3) and (1) of the Act.

III. Analysis and Discussion

A. Section 8(a)(1) Allegations

It is well established that healthcare facilities are not subject to some of the Board policies regarding dress codes as those policies are applied in industrial settings, "but rather are subject to other policies which recognize[] the need to balance the interest and comfort of the patients against the Section 7 rights of employees." *Medical Center of Beaver County, Inc*. 266 NLRB 429, 430 (1983); see also *NLRB v. Baptist Hosp., Inc.*, 442 U.S. 773, 779 (1979) ("Congress has committed to the Board the task of striking the appropriate balance among the interests of hospital employees, patients, and employers."). Thus while employees' display of union insignias or apparel is a right protected under Section 7 of the Act, *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801-803 (1945), the Board has held that "[i]n healthcare facilities, restrictions on the wearing of union-related buttons are presumptively valid in immediate patient care areas." *Sacred Heart Medical Center*, 347 NLRB 531 (2006), review granted on other grounds sub nom. *Washington State Nurse's Ass'n v. NLRB*, 526 F.3d 577 (9th Cir. 2008). The Supreme Court has reasoned that it is appropriate to grant hospitals special latitude to restrict union activity in patient-care areas since hospitals "'are not factories or mines or assembly plants'" but rather facilities "'where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and his family – irrespective of whether that patient and that family are labor or management oriented – need a restful, uncluttered, relaxing, and helpful atmosphere, rather than one remindful of the tensions of the marketplace in addition to the tensions of the sick bed.'" *NLRB v. Baptist Hospital, Inc.*, 442 U.S. at 783 n.12, quoting the concurring opinion of Justice Blackmun in *Beth Israel Hospital v. NLRB*, 437 U.S. 483, 509 (1978). The Board has held, however, that the presumption of validity only extends to restrictions in patient-care areas. Restrictions that also limit the display of union buttons in non-patient-care areas are presumptively invalid, and such restrictions are permissible only if the healthcare facility establishes "'special circumstances,'" i.e., that the restriction is "necessary to avoid disruption of health care operations or disturbance of patients." Id. at 779, quoting *Beth Israel Hospital v. NLRB*, 437 U.S. at 507.

Given the distinction between the treatment of restrictions in patient-care areas and non-patient-care areas, the first order of business in analyzing the allegation that the Respondent

violated the Act by prohibiting hospital employees from wearing certain union paraphernalia is to determine whether the Respondent was restricting their display only in patient-care areas, or whether it was also restricting their display in non-patient-care areas. I find that the Respondent restricted the wearing of union buttons and stickers exclusively in patient-care areas. In each of the instances alleged in the complaint the restriction was enforced to prohibit an employee from wearing the button or sticker while in a patient care area. All of the employees who Naccarato told to remove either the stomp sticker or the proud 1199 button in December 2010 and January 2011 (Macagnone, Roule, Mathrick, and Propst) were working in the emergency department – a patient-care area – at the time. When Altomer told Coates to remove the access denied button in December 2010, Coates was working in the intensive care unit – another patient-care area. Lastly, when Freiss told Coates to remove the "have a heart" button in February 2011, she specified that Coates could not wear the button in a patient area. The record is devoid of evidence that any employee was ever told that he or she could not wear a union button or sticker while working in a non-patient-care area or that the Respondent made any general pronouncements to the workforce that might have been understood by employees to prohibit them from wearing any union button or sticker while in non-patient-care areas. To the contrary, Northrup, the General Counsel's own witness, testified that she had been consistently wearing the boot sticker at her work station, which was a non-patient-care area, and had never been asked to remove it.

A finding that the restriction only applied in patient-care areas is also supported by the Respondent's December 23 memorandum regarding the stomp sticker. That memorandum specifies that the sticker "is not to be worn in any patient care area" and that "any time [employees] are in patient care areas, the insignia must be removed." The memorandum does not state a hospital-wide prohibition, nor does it state, or in any way suggest, that the button cannot be worn in non-patient-care areas. Similarly, the evidence shows that, when communicating the restriction to employees working in patient-care areas, the Respondent's officials generally specified that the restriction applied in patient-care areas and never implied that the restriction extended beyond those areas. For example, when Naccarato directed employees working in the emergency department to remove the stomp sticker, she noted to each that the sticker was not appropriate in a patient-care area. When Altomer approached Coates on December 24 about the access denied button, she told her to remove it in patient-care areas. When Freiss approached Coates on February 14 about the heart sticker she told Coates not to wear it in "patient areas." Moreover, the Respondent was not shown to have confiscated the buttons or stickers, or otherwise to have interfered with the employees' ability to easily resume displaying the item after exiting the patient-care area. Cf. *Mt. Clemens General Hospital*, 335 NLRB 48, 50 (2001) (hospital's prohibition on union button unlawful where, inter alia, the hospital confiscated the button), enfd. 328 F.3d 837 (6th Cir. 2003); cf. *Enloe Medical Center*, 345 NLRB 874, 876 (2005) (ban extending to both patient-care and non-patient-care areas unlawful because, inter alia, hospital could have allowed employees to "remove and later put back on their [union] badges when moving in and out of patient care areas"), affd. after remand, 348 NLRB 991 (2006).

For the reasons discussed above, I conclude that the Respondent restricted the wearing of the union stickers and buttons at-issue here exclusively in patient-care areas, and therefore that those restrictions were all presumptively valid. The next question is what must the General Counsel show in order to rebut the presumption that the restrictions were valid. The briefs filed

in this case reveal that the parties are essentially in agreement that the General Counsel may overcome the presumption of validity by showing that the restrictions have been enforced discriminatorily/disparately or without a legitimate basis. Brief of General Counsel at Page 11; Brief of Respondent at Page 3; Brief of Charging Party at Page 1. Although the precedent cited by the parties in support of this rebuttal standard is somewhat thin,[12] I adopt that standard since it is reasonable and not contrary to any other precedent identified by the parties or my own review of the case law. I apply the rebuttal standard with an eye towards the Supreme Court's admonition that hospitals require special latitude to restrict union activity in patient-care areas because those are settings "'where patients and relatives alike often are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and his family . . . need a restful, uncluttered, relaxing, and helpful atmosphere.'" *NLRB v. Baptist Hospital, Inc.*, 442 U.S. at 783 n.12. I turn now to consideration of whether the General Counsel has succeeded in rebutting the presumption of validity that attaches to the restrictions that the Respondent applied in this case.

Stomp Sticker: Regarding the stomp sticker, I conclude that the General Counsel has failed to meet the burden of showing that the Respondent's prohibition of that sticker was discriminatory or without a legitimate basis. The sticker, which shows a small man about to be crushed by a giant boot, is more than the type of display of affiliation that the Respondent has traditionally permitted irrespective of union content. Rather I find that the sticker is facially

[12] The parties cite *The Register-Guard,* 351 NLRB 1110 (2007), enfd. in part 571 F.3d 53 (D.C. 2009), *Mt. Clemens General Hospital,* supra, and *London Memorial Hospital,* 238 NLRB 704, 709-710 (1978). The decision in *The Register-Guard* involves a newspaper, not a hospital, and thus does not invoke the patient-care area presumption of validity at all. In *London Memorial Hospital* the restriction at-issue was not limited to patient-care areas and thus was presumptively invalid, not presumptively valid, under Board precedent. The decision in *Mt. Clemens* does address a prohibition on the wearing of a union insignia in patient care areas, but, once again, in a context where the prohibition was also applied in non-patient-care areas. If a rule prohibits the wearing of union insignia in both patient-care and non-patient-care areas that rule is presumptively invalid, and special treatment is not carved out for its application in patient-care areas. See, e.g., *London Memorial Hospital*, 238 NLRB at 704 fn.2 ("We find it unnecessary to decide whether . . . a rule prohibiting the employees from wearing union buttons on [the employer's] second floor would be 'justified presumptively' because of the nature and severity of the mental disturbances to be found among the patients on that floor, inasmuch as the rule in question was neither promulgated nor enforced in such a limited manner."); see also *The Times Publishing Company*, 231 NLRB 207, 208 (1977) (When an employer promulgates and maintains an overly broad restriction "those rules are invalid for all purposes and not valid in part as they apply to a given area."). Nevertheless, in *Mt. Clemens* the Board affirmed the administrative law judge's decision, which referenced the rule that an employer's restriction on union paraphernalia is presumptively valid in patient-care areas and went on to find that the prohibition at-issue in that case violated Section 8(a)(1). The administrative law judge gave multiple reasons for this decision, including that: the Respondent did not prohibit the wearing of any other insignia or union buttons in all areas of the hospital including patient care areas; the Respondent did not put in writing any reasons for its belief that wearing of the button could cause disruptions; there were no evidence that patients or their families complained about the button or felt that it interfered with patient care or safety; there was no evidence that the button caused disruption in the workplace; the employer had permitted the wearing of other buttons that the Respondent conceded "could be construed as controversial not unlike the [button that had been prohibited]"; and the at-issue button did not cause a work stoppage or sit-down strike.

controversial and inflammatory.[13] It uses an image of imminent violence and bodily harm, and anxiety over personal physical safety. Display of such an image in patient-care areas would reasonably be expected to interfere with the maintenance of the "restful, uncluttered, relaxing, and helpful atmosphere" that the Supreme Court has recognized patients require. It is hard to imagine that seeing the stomp sticker on their caretakers would not disturb the hospital's patients, especially some of those in the emergency department who are in acute medical or psychological distress. See *Northwoods Rehabilitation and Extended Care Facility*, 344 NLRB 1040, 1052 (2005) (The condition of the patients who will be exposed to a union button is one factor to be considered when determining whether a hospital may impose a restriction on such activity.).

The Union suggests that the restrictions the Respondent applied starting in December 2010 were motivated by discrimination based on the contemporaneous negotiations for a new collective bargaining agreement. That is not borne out by the record. The contract negotiations began in August 2010 – approximately 4 months before the Respondent took any of the actions alleged to be unlawful in this case.[14] Throughout the negotiations, the Respondent has permitted employees in both patient and non-patient areas to wear a variety of accessories expressing the employees' affiliation with the Union. Neither the Union nor the General Counsel introduced evidence showing that in December 2010 contract negotiations changed in some significant respect that would be expected to lead the Respondent to begin discriminating at that time. Moreover, the record does not show that, prior to December 22, 2010, employees working in patient-care areas had worn any type of button or sticker (either union-related or not) that was as controversial or inflammatory as the stomp sticker. The record evidence fails to show that the Respondent's decision to prohibit the stomp sticker in patient-care areas, but not to restrict other union and non-union accessories, was based on something other than the significantly more controversial, inflammatory, and disturbing nature of the stomp sticker. Cf. *Nordstrom, Inc.* 264 NLRB 698, 700 (1982) (ban on union button unlawful where, inter alia, the button was small and did not contain provocative language).

In finding for the Respondent on this issue, I considered the lack of reliable evidence that any patient or visitor made a complaint about the sticker, had a discussion with an employee about the sticker, or was actually disturbed by the sticker.[15] Restrictions on union activity in a

[13] I recognize that the Respondent's unwritten restriction on "controversial and inflammatory" accessories is worded broadly, however, the stomp sticker clearly falls within almost any reasonable understanding of what those terms would mean in the setting of a hospital's patient-care areas.

[14] Timing is an important factor in assessing discriminatory motivation. See, e.g. *LB&B Associates, Inc.*, 346 NLRB 1025, 1026 (2005), enfd. 232 Fed. Appx. 270 (4th Cir. 2007); *Desert Toyota*, 346 NLRB 118, 120 (2005); *Detroit Paneling Systems*, 330 NLRB 1170 (2000), enfd. sub nom. *Carolina Holdings, Inc. v. NLRB,* 5 Fed. Appx. 236 (4th Cir. 2001); *Bethlehem Temple Learning Center*, 330 NLRB 1177, 1178 (2000); *American Wire Products*, 313 NLRB 989, 994 (1994).

[15] The Respondent argues that there was evidence of disruption inasmuch as, after Macagnone was called into Naccarato's office about the stomp sticker, nurses discussed the possibility of being disciplined for wearing it, and because Union officials who came to the facility to contest the discipline against Macagnone caused a commotion in a hallway near a patient care area. I do not consider either purported disruption in ruling on the lawfulness of the Respondent's prohibition of the sticker because both were reactions to the Respondent's prohibition of the sticker, not to the sticker itself. An employer cannot rely on disruptions caused by its own unlawful reaction to otherwise protected union activity to

hospital's patient-care areas can, however, lawfully be based on reasonable concern that such activity "*may* have adverse effects on [patients'] recovery" even absent evidence that the feared effects have actually occurred. *NLRB v. Baptist Hospital*, 442 U.S. at 784 (emphasis added). Thus, in *Northwoods Rehabilitation and Extended Care Facility*, the hospital could rely on the "potential adverse effect" of a union button on patients to defend its restriction on the display of the button. 344 NLRB at 1052. Similarly, in *Pathmark Stores* it was held that the employer had a legitimate interest in restricting the wearing of a controversial union button based on the button's "reasonably likely effect on customers" even though there was no evidence that the effect had occurred. 342 NLRB 378, 379 (2004). Given the nature of the image on the stomp sticker, I conclude that concerns about its adverse effects on patients were legitimate.

I also considered the decision in *Mt. Clemens General Hospital*, 335 NLRB at 50, which is cited by the General Counsel and the Union. In that case the Board affirmed the administrative law judge's conclusion that the employer's restriction on employees' display of a union button in both non-patient-care and patient-care areas was a violation of Section 8(a)(1). In reaching that conclusion the judge relied, inter alia, on the fact that employees in the hospital, including in patient-care areas, were permitted to wear other sorts of buttons and on the lack of the evidence that the disputed union button was disturbing patients. The facts in *Mt. Clemens* are unlike those at-issue here in a number of the most relevant respects. First, the restriction in *Mt. Clemens* applied in both patient-care and non-patient-care areas. Although the judge referenced the presumption of validity that attaches to restrictions that apply exclusively in patient-care areas, the applicable presumption under the circumstances present there was *against* the validity of the restriction since the restriction applied beyond patient-care areas. *London Memorial Hospital*, 238 NLRB at 704 fn. 2; see also *The Times Publishing Company*, 231 NLRB at 208 (an overly broad restriction is "invalid for all purposes and not valid in part as they apply to a given area"). Second, in *Mt. Clemens*, unlike the instant case, the Respondent actually confiscated the buttons that the union distributed rather than simply telling employees to remove them. This meant that the employees in *Mt. Clemens*, unlike those here, could not simply re-attach the buttons upon exiting patient-care areas. Third, in *Mt. Clemens* the hospital conceded that it had previously permitted the wearing of other buttons that were as controversial as the union button that it was prohibiting. In the instant case, the Respondent does not concede, and the record does not show, that buttons or stickers as controversial as the stomp sticker had previously been permitted in patient-care areas of the hospital. Finally, the button at issue in *Mt. Clemens* was manifestly less controversial and less likely to disturb patients than is the stomp sticker. The button in *Mt. Clemens* simply showed the letters FOT with a line through them to express the employees' opposition to forced overtime. That button, unlike the stomp sticker, did not use an image of violence, bodily harm, and anxiety over personal safety to convey its message. For these reasons, I find that the *Mt. Clemens* decision is not controlling here.

I conclude that the evidence does not show that the Respondent violated Section 8(a)(1) on December 23 by threatening employees with discipline for wearing the stomp sticker or by promulgating and maintaining a rule prohibiting employees from wearing the stomp sticker in patient-care areas. The complaint allegations related to these actions should be dismissed.

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strip that union activity of its protected status.

"Proud 1199 SEIU Member" Button: I conclude that the General Counsel has met its burden of showing that the Respondent acted without a reasonable basis when, on January 18, 2011, Naccarato directed Macagnone to remove the "proud 1199" button. This button is essentially a statement of affiliation, something that the Respondent states that its professional image policy allows employees to display in patient-care areas. Indeed, the evidence shows that the Respondent has permitted employees in patient-care areas to wear accessories showing their affiliation with numerous entities, including educational institutions, certification programs, the Knights of Columbus, and a volunteer firefighter group, as well as in some instances the Union. The "proud 1199" button does not include any statements that explicitly or implicitly reference a conflict between the Respondent and employees. It does not mention any problems at the hospital, or advocate for any changes there. This statement of the employee's affiliation with the Union, and personal pride in that affiliation, is not facially controversial or inflammatory.

Naccarato testified that the button was more than a mere statement of affiliation because of its size which she characterized as "a little exorbitant." The size of the "proud 1199" button – standing alone as it is here – is not a legitimate basis on which to prohibit it. Although the size of a union button is one factor that is often considered in determining whether an employer may prohibit that button, precedent indicates that more than size on the order of the proud 1199 button is required to create a legitimate basis for a prohibition. In *Asociacion Hospital Del Maestro*, a hospital's restrictions on a union button that was 2 ½ inches in diameter and a union ribbon that was 4 inches long were held to be unlawful despite the large size of those accessories because, inter alia, hospital employees were permitted to wear various other types of buttons and ribbons. 283 NLRB 419, 421 and 427 fn. 9 (1987), enfd. 842 F.2d 575 (1st Cir. 1988). In *Mesa Vista Hospital,* a hospital's restriction of 2 by 3 inch union badges was held to be unlawful because, inter alia, the hospital employees involved were not required to wear white nurses' uniforms. 280 NLRB 298, 300 fn.14 and 302 (1986). In the instant case, the button was 3 inches wide, but as in *Hospital Del Maestro* and *Mesa Vista*, employees were permitted to wear a variety of other buttons and accessories and Macagnone was not required to wear a white nurse's uniform. I conclude that, in the instant case, the size of the "proud 1199" button, standing alone, was not a legitimate basis for banning that button. Therefore, the General Counsel has met its responsive burden.

In reaching this conclusion, I do not make any finding as to whether anti-union animus motivated the Respondent to restrict the proud 1199 button. I nevertheless conclude that, by prohibiting the button, the Respondent failed to strike the legally required balance between Macagnone's Section 7 rights and the "interest and comfort of patients" at the hospital. *Medical Center of Beaver County*, 266 NLRB at 430; see also *NLRB v. Baptist Hosp.*, 442 U.S. at 779.

For the reasons discussed above, I find that the Respondent violated Section 8(a)(1) on January 18, 2011, when Naccarato directed Macagnone to cease displaying the proud 1199 button in a patient-care area.

"Access Denied" Button: As discussed above, I find that the restriction on Coates' display of the "access denied" button applied only in a patient-care area (the intensive care unit) and that, as a result, the restriction is presumptively lawful. *Sacred Heart Medical Center* supra. The General Counsel may rebut that presumption by showing that the prohibition was enforced

discriminatorily or without a legitimate basis. I find that the General Counsel has failed to make that showing.

The button at-issue is not in the category of "mere statements of affiliation" that the Respondent's policy permits. The button's message – "ACCESS DENIED! Ask the Boss WHY?" – attempts to place the reader in the middle of a dispute between the caretaking employee and the management of the hospital. The button is large, approximately 3 inches in diameter, and likely to be noticed by patients. Moreover, I believe that Altomer was reasonably concerned that the button's ambiguous message would be understood by some patients as suggesting that the hospital was denying care or services to them. That is a disturbing message for patients who are relying on the hospital's care. Exposure to the message is likely to interfere with the "restful, uncluttered, relaxing, and helpful atmosphere" that the Supreme Court has said that hospital patients require. See *NLRB v. Baptist Hospital, Inc.*, supra. I note moreover, that as with the other union paraphernalia, the Respondent did not confiscate the access denied button or otherwise attempt to prevent anyone from wearing it in areas that were not dedicated to patient care. I conclude that enforcement of the prohibition in this instance had a legitimate basis – the controversial, inflammatory, and potentially disturbing nature of the button's message and the Respondent's need to maintain an atmosphere conducive to patient care.

I recognize that for some months prior to December 24 Coates had been permitted to wear the access denied button. However, I find that, under the circumstances here, this does not show that the Respondent was enforcing its rule in manner that was discriminatory or without a legitimate basis. I note first that the difference here is in the way the Respondent treated the *same* button being worn by the *same* employee. It is difficult to see how such a difference could be the result of discrimination on the basis of the union content of the button or Coates' protected activities. The General Counsel did not show that the Respondent permitted other employees in patient-care areas to display buttons that were similarly controversial and/or inflammatory, but which did not concern the Union, or that Coates was a more active union supporter than any other employees who may have been permitted to wear the same button in patient-care areas. In addition, as discussed above, the evidence did not show that, in December 2010, anything changed regarding the bargaining between the parties that would explain a change in the Respondent's stance with respect to the access denied button. Rather, in this instance the most likely explanation for the difference in the way the Respondent reacted to Coates' display of the button on December 24 is that different supervisors were involved. Altomer did not generally have authority over the intensive care unit where Coates worked, but on the day in question she was substituting in a position that required her to supervise that unit. Prior to seeing Coates wearing the access denied button on December 24, Altomer had never seen any employee in a patient-care area wearing the button. The fact that different supervisors had different views of the same button does not show that the difference in treatment was discriminatory. As the Board has recognized, "the arguably uneven" application of the same policy by different supervisors "cannot reasonably be relied on alone to supply an 'inference'" of discrimination. *Otani Hotel & Garden*, 325 NLRB 928, 941 (1998).

I conclude that the evidence does not show that the Respondent violated Section 8(a)(1) on December 24, 2010, by threatening an employee with discipline for wearing the "access denied" button. The complaint allegations relating to this should be dismissed.

"Have a Heart" Sticker: I conclude that the General Counsel has met its burden with respect to the Respondent's decision to prohibit Coates from wearing a sticker that reads "HAVE A HEART DO YOUR PART" in large lettering and identifies the Union in small lettering. This sticker communicates a facially benign, even warm, sentiment. The message is not one that a reasonable patient would interpret as controversial, inflammatory or disturbing. Contrary to the Respondent's assertion, the message in no way suggests that the hospital is being heartless and inhumane. I note, moreover, that Coates was not required to wear a white nurse's uniform at work and that the hospital allowed employees to wear a wide range of other non-controversial and non-inflammatory buttons and stickers. See *Asociacion Hospital Del Maestro*, supra, and *Mesa Vista Hospital,* supra. At trial, the Respondent failed to call a single hospital official who was involved in the decision to restrict the heart sticker to testify about the basis for that decision or even to state that they believed display of the sticker violated hospital policy. On balance, I find that the record evidence shows that the Respondent's decision to prohibit Coates from displaying the "have a heart" sticker while permitting employees to wear buttons communicating other types of non-controversial/non-inflammatory sentiments, was without a legitimate basis. Therefore, the General Counsel has satisfied its responsive burden.

For the reasons discussed above, I conclude that the Respondent violated Section 8(a)(1) on February, 14 2011, when Freiss directed Coates to cease displaying the heart sticker in a patient-care area.

B. Section 8(a)(3) Allegation

The General Counsel contends that the Respondent violated Section 8(a)(3) and (1) when, on December 23, 2010, Naccarato suspended Macagnone for wearing the stomp sticker. The only basis that the General Counsel asserts for finding that the suspension was unlawful is that, under Board precedent, discipline imposed pursuant to an unlawful rule is itself a violation of Section 8(a)(3) and (1). Brief of General Counsel at Pages 14 and 16, citing *London Memorial Hospital*, 238 NLRB at 709, and *A.T. & S.F. Memorial Hospitals, Inc.*, 234 NLRB 436 (1978); see also *Continental Group, Inc.*, 357 NLRB No. 39, slip op. at 4 (2011) ("[D]iscipline imposed pursuant to an unlawfully overbroad rule violates the Act in those situations in which an employee violated the rule by (1) engaging in protected conduct or (2) engaging in conduct that otherwise implicates the concerns underlying Section 7 of the Act."). For the reasons discussed above, the Respondent's prohibition on the display of the stomp sticker in patient-care areas was not unlawful. Therefore, the General Counsel's contention that Macagnone's suspension was unlawful because it occurred pursuant to an unlawful rule necessarily fails.

In its brief the Union forwards another theory, arguing that Macagnone's suspension was in retaliation for his union activism – including his distribution of the stomp sticker to others, his status as a "delegate in training," and his presence at contract negotiations. This retaliation theory was not alleged or litigated by the General Counsel. Even if the theory had merit, I would not find a violation based upon it because the General Counsel controls the complaint, and the Charging Party Union cannot enlarge upon or change the General Counsel's theory of the case. *Dana Corp.*, 356 NLRB No. 49, slip op. at 3-4 fn.6 (2010). At any rate, the Union's retaliation theory lack merits. First of all, the record does not show that the Respondent knew that Macagnone had engaged in any union activity beyond his display of the stomp sticker and his attendance at a number of negotiating sessions. Nor does the record show that any employees

who might arguably have been treated better than Macagnone did any less to support the Union than he did. More importantly, the record shows that Macagnone was treated no differently than other employees who wore the same union sticker. On December 23, Naccarato saw three employees in the emergency department wearing the stomp sticker – Macagnone, Propst and Roule. She told each of the three to remove the sticker. Propst and Roule complied and were not disciplined. Macagnone repeatedly refused, even after being advised that refusal would result in suspension, and he was suspended. On this record, there is no reason to believe that Propst and Roule were treated differently than Macagnone for any reason other than the fact that they complied with the Respondent's lawful instruction regarding the stomp sticker, while Macagnone did not. The view that Macagnone was suspended because he refused his employer's lawful instruction to remove the stomp sticker, not because of his other union activity, is further supported by the fact that subsequently, on January 18, when Macagnone complied with his employer's instruction to remove the "proud 1199" button he was not disciplined in any way. Thus Macagnone was treated in the same way that Propst and Roule as well as Coates were treated. None of them were disciplined when they complied with the Respondent's instructions to remove union paraphernalia.

I conclude that the evidence does not show that the Respondent violated Section 8(a)(3) and (1) on December 23 when it suspended Macagnone. The complaint allegations relating to the suspension should be dismissed.

CONCLUSIONS OF LAW

1. The Respondent, Columbia Memorial Hospital, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

2. The Union, 1199 SEIU, United Healthcare Workers East, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1): on January 18, 2011, when Naccarato directed Macagnone to cease displaying the "proud 1199" button in a patient-care area; and on February 14, 2011, when Freiss directed Coates to cease displaying the "have a heart" sticker in a patient-care area.

4. The Respondent was not shown to have committed the other violations alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist there from and to take certain affirmative action designed to effectuate the policies of the Act. In particular, the Respondent must rescind any rule or practice prohibiting employees from wearing the "proud 1199" button or the "have a heart" sticker that were at-issue in this proceeding.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.[16]

ORDER

The Respondent, Columbia Memorial Hospital, Hudson, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from displaying the union button that reads "PROUD 1199 SEIU Member," see Appendix C, or the union sticker that reads "HAVE A HEART DO YOUR PART," see Appendix E.

(b) Threatening employees with discipline for displaying either the union button or the union sticker referenced in the preceding paragraph.

(c) Enforcing any restriction on employees' display of union paraphernalia in patient-care areas in a manner that is discriminatory or without a legitimate basis.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind any rule or practice restricting employees' display of the union paraphernalia referenced in paragraph 1(a) of this Order.

(b) Within 14 days after service by the Region, post at its facility in Hudson, New York, copies of the attached notice marked "Appendix A."[17] Copies of the notice, on forms provided by the Regional Director for Region Three, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

17 If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 18, 2011.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. August 26, 2011

_____
Paul Bogas
Administrative Law Judge

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT prohibit you from wearing the union button that reads "PROUD 1199 SEIU Member," or the union sticker that reads "HAVE A HEART DO YOUR PART."

WE WILL NOT threaten you with discipline for displaying either the union button or the union sticker referenced above.

WE WILL NOT enforce any restriction on your display of union paraphernalia in patient-care areas in a manner that is discriminatory or without a legitimate basis.

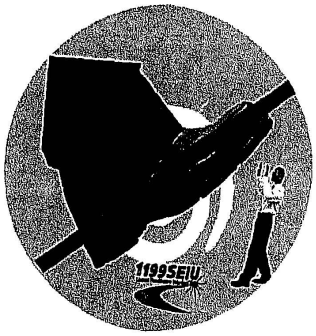
WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind any rule or practice restricting your right to display the union button that reads "PROUD 1199 SEIU Member," and/or the union sticker that reads "HAVE A HEART DO YOUR PART."

Columbia Memorial Hospital
(Employer)

Dated _____ By _____
(Representative) (Title)

APPENDIX B



APPENDIX C

G

APPENDIX D

APPENDIX E

HAVE A HEART DO YOUR PART

1199SEIU